

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3546 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIVISIONAL CONTROLLER

Versus

FARIDHBHAI H SALAR

Appearance:

MR HC RAVAL for Petitioner

MR CB DASTOOR for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 29/01/97

ORAL JUDGEMENT

The petitioner Corporation which is a statutory Corporation and is mainly engaged in the services of providing transport facilities, has questioned the legality and validity of the award recorded by the Labour Court in Reference (LCA) No.558/85, by filing this petition against the respondent workman who was working as booking clerk at the relevant time at Bhavnagar.

The services of the respondent workman were terminated on the ground of misconduct and indiscipline in giving blocks of tickets of different denominations to conductors in violation of the procedure prescribed. The respondent workman being found guilty of the said charges levelled against him was dismissed from the service. The workman, inter alia, contended that he was not guilty of the said charges levelled against him and in fact it was his superior officer who was guilty of the said offence and that he had no intention of misappropriating the funds of the Corporation. It was also denied that he had tampered with the records of the blocks of tickets issued to various conductors. He, therefore, raised industrial dispute which was referred to the Labour Court.

On examination of the facts and circumstances and the evidence on record, the Labour Court quashed the order of dismissal and directed the petitioner Corporation to reinstate the respondent workman with continuity of service on his original post with full backwages. Hence this petition.

The Labour Court has found that the departmental inquiry was conducted and concluded in consonance with the principles of natural justice and after giving reasonable opportunity of hearing to the respondent workman. However, the Labour Court has further observed that the finding recorded in the departmental inquiry is defective and the conclusion is not legal. It was, therefore, held that the alleged misconduct is not proved. This finding of the Labour Court is not supported by reasons. It appears from the record that the Labour Court has made unwarranted surmises and conjectures while holding that the concerned conductors could have taken blocks of tickets by opening the office during the course of other booking clerks. There is no dispute about the fact that the conductor who was also involved in the misappropriation was prosecuted. However, the evidence of the said conductor against the respondent workman is discarded on the ground that no action was taken against the said conductor by the petitioner Corporation. The aforesaid observation appears to have much weighed with the Labour Court which is factually and legally incorrect and unsustainable. The approach of the Labour Court appears to be quite casual in appreciation and examination of the facts and circumstances and the evidence emerged from the record of the case. Such an approach is required to be deprecated and more so when the respondent workman was facing grievous and serious

charges of misconduct, indiscipline and assisting and abetting misappropriation of public funds together with past seven defaults recorded against the respondent workman. It cannot be gainsaid that in cases of misappropriation and such serious charges, the Labour Court would be slow in interfering with the order of dismissal from service because the master is not expected to retain a workman who has betrayed the confidence by indulging into serious misconduct and misappropriation of public funds while in service. It is true that the Labour Court has wide discretion and powers under section 11-A of the ID Act. However, such powers are required to be exercised judiciously and equitably. The Labour Court is not having unguided power to set aside the justified order passed by the Management though the Labour Court can on correct appraisal and assessment of the evidence can substitute the finding of the management reached after holding the departmental inquiry and can also interfere with the punishment imposed by the Management if the same is highly disproportionate to the degree of guilt proved against the workman concerned.

After having taken into consideration all the relevant facts and circumstances and considering the rival submissions raised before this Court, the ends of justice will be satisfied if the matter is remanded to the Labour Court for re-hearing and adjudication in view of the unwarranted surmises and conjectures and misreading of evidence instead of substituting the finding recorded by it in this petition.

Consequently, the matter is remitted back to the Labour Court for fresh determination and decision after hearing the parties in accordance with law as early as possible and preferably within a period of three months from the date of receipt of writ of this Court. The petition is partly allowed leaving the parties to bear their costs. Rule is made absolute to the aforesaid extent.

.....